Supreme Court, U.S.
FILED
SEP 12 1995
CLERK

NO. 95-18

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

LINDA O'NEAL,

Petitioner,

v.

JUDICIAL QUALIFICATION COMMISSION OF GEORGIA

Respondent,

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

PETITIONER'S REPLY BRIEF

Linda O'Neal
Petitioner, pro se
Route 1, Box 478
Fort Valley, Georgia 31030
(912) 825-1678

14 pp

TABLE OF CONTENTS

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

BRIEF 1

A. JURISDICTIONAL ISSUES 1

B. RESPONDENT'S MISLEADING GENERAL STATEMENT AND ITS NONCOMPLIANCE WITH SUPREME COURT RULE 15.1 3

C. INADEQUATE LEGAL COUNSEL ISSUE IS EXCEPTIONAL 4

D. IMPORTANCE OF ISSUES 8

CONCLUSION 9

TABLE OF AUTHORITIES

Page

Cases

New York ex rel. Bryant v. Zimmerman, 278 U.S., 67, 49 S.Ct., at 63 2

Brinkerhoff-Faris Trust Co. v. Hill, 281 U.S. 673, 677- 78 (1930) 2

Pruneyard Shopping Center v. Robins, 447 U.S. 74, 85-86 n. 9 (1980), 100 S.Ct. 2035, 2043 n. 9 2

Herndon v. State of Ga., 295 U.S. 441, 55 S.Ct. 794, 79 L.Ed. 1530, rehearing denied 296 U.S. 661, 56 S.Ct. 82, 80 L.Ed. 471 ..... 2, 3

Great Northern R. Co. v. Sunburst Oil & Refining Co., 287 U.S. 358, 53 S.Ct. 145, 77 L.Ed. 360 3

Wood et al., v. State of Georgia, 450 U.S. 261, 101 S.Ct. 1097, 67 L.Ed.2d 220, (1981) 3

White v. Ragen, 324 U.S. 760, 65 S.Ct. 978, 89 L.Ed. 1348, rehearing denied 326 U.S. 807, 66 S.Ct. 133, 90 L.Ed. 492 7

Chandler v. Fretag, 348 U.S. 3, 75 S.Ct. 1, 99 L.Ed. 47 ..7

Ungar v. Sarafite, 376 U.S. 575, 84 S.Ct. 841, 11 L.Ed.2d. 921, rehearing denied 377 U.S. 925, 84 S.Ct. 1218, 12 L.Ed.2d. 217 ..... 7, 8

Grigsby v. Mabry, 637 F.2d. 525, on remand
569 F.Supp. 1273 8

Shelley v. Kraemer, 334 U.S. 1, 68 S.Ct. 836 (1948) 9

Constitutional Provisions

First Amendment, Constitution of the United States 2

Fifth Amendment, Constitution of the United States 2, 3, 8

Rules

Rule 15.1, Rules of the Supreme Court of the
United States 4

Treatises

Robert L. Stern, et al., *Supreme Court Practice*,
(7th ed. 1993) 3

No. 95-18

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1995

LINDA O'NEAL,

Petitioner,

v.

JUDICIAL QUALIFICATION COMMISSION OF GEORGIA

Respondent,

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

PETITIONER'S REPLY BRIEF

BRIEF

Respondent, in its opposing brief in No. 95-18, misrepresented pertinent facts and issues of law. This is evident from the following:

A. Jurisdictional Issues

Respondent's arguments which challenge, as belated, the constitutional issues raised by Petitioner to invoke the jurisdiction of this Court are without merit. Respondent's statement that Petitioner first attempted to assert the constitutional issues in the Motion for Reconsideration[1] is not

accurate with respect to the First Amendment issue presented to this Court regarding her removal from office for making a public statement. The First Amendment issue was "brought to the attention of the state court with fair precision and in due time", when presented to the Supreme Court of Georgia in petitioner's original petition to that court objecting to the Judicial Qualification Commission's Findings and Recommendations.[2] *New York ex rel. Bryant v. Zimmerman*, 278 U.S., at 67, 49 S.Ct., at 63. "And if the record as a whole shows either expressly or by clear intendment that this was done, the claim is to be regarded as having been adequately presented." *Id.* at 67, 49 S.Ct., at 63.

Further, the decision to remove Petitioner from office based wholly or in part on her refusal to acknowledge that any specific action taken by her was improper and her refusal to accept personal responsibility for the difficulties she experienced with other elected officials, as framed by the Fifth Amendment constitutional question presented to this Court[3], was an unexpected decision by the Supreme Court of Georgia, as it had not been a previous issue in the case, and thus Petitioner had no prior opportunity to raise the federal question prior to presenting it in the Motion for Reconsideration to the Supreme Court of Georgia.[4] This Court has held that under such circumstances the federal question is timely raised and will support the exercise of Supreme Court Jurisdiction. *Brinkerhoff-Faris Trust Co. v. Hill*, 281 U.S. 673, 677- 78 (1930). See also *Pruneyard Shopping Center v. Robins*, 447 U.S. 74, 85-86 n. 9 (1980), 100 S.Ct. 2035, 2043 n. 9; *Herndon v. State of Ga.*, 295 U.S.

---

1 Respondent's Brief in Opposition, at 4.

2 Petition for Writ of Certiorari, Petition and Supporting Brief in Objection to Findings and Recommendations of the Judicial Qualifications Commission , App. at A76-77.

3 Petition for Writ of Certiorari, Questions Presented.

4 Petition for Writ of Certiorari, Motion for Reconsideration, App. at A34.

441, 55 S.Ct. 794, 79 L.Ed. 1530, rehearing denied 296 U.S. 661, 56 S.Ct. 82, 80 L.Ed. 471; *Great Northern R. Co. v. Sunburst Oil & Refining Co.*, 287 U.S. 358, 53 S.Ct. 145, 77 L.Ed. 360. Moreover, Petitioner could not have reasonably anticipated this part of the decision by the Supreme Court of Georgia, given its prior decision concerning the inappropriateness of considering a litigant's remorse.[5]

Petitioner's constitutional claim under the Fifth Amendment that she was denied adequate legal representation, first presented to the Supreme Court of Georgia in her Motion for Reconsideration, is supported by a set of facts that are so egregious that this Court, in its discretion, may grant certiorari in order to correct an erroneous decision below and to avert a gross miscarriage of justice. Robert L. Stern, et al., *Supreme Court Practice*, §4.17, at 193-195. Also, this Court has said "where...a possible due process violation is apparent on the particular facts of a case, we are empowered to consider the due process issue." *Wood et al., v. State of Georgia*, 450 U.S. 261, 101 S.Ct. 1097, 67 L.Ed.2d 220 (1981). In *Wood*, supra, this Court, in a footnote, cited several reasons why it was appropriate to consider the due process issue even though it had not been raised in the court below. *Id. at n. 5.* Most importantly, Respondent's statements with respect to this issue, as stated in their opposing brief, are either erroneous or misleading and such misrepresentations will be more fully discussed below.

B. Respondent's Misleading General Statement And Its Noncompliance With Supreme Court Rule 15.1

---

[5] *See* In The Matter Of Mitchell, 249 Ga. 280 (290 SE2d 426) (1982), cited in the Petition for Writ of Certiorari, at 23-24.

Contrary to Respondent's misleading statement that reads, "No useful purpose would be served by attempting to detail each and every misstatement, omission and exaggeration contained in Petitioner's Statement of Facts",[6] Petitioner did not make any misstatement or exaggeration with respect to the "Statement of Facts" in her Petition For Writ of Certiorari. Any omission of facts was for the sake of brevity and otherwise does not decrease the significance or merit of Petitioner's constitutionally based claims. Moreover, as shown by Petitioner's Petition and Supporting Brief in Objection to Findings and Recommendations of the Judicial Qualifications Commission, the factual basis for Respondent's Findings and Recommendations filed in the Supreme Court of Georgia is grossly inaccurate, is not supported by the record, and recklessly misrepresents the truth.[7] Furthermore, Respondent's statement of "Applicable Facts" does not fully comply with Supreme Court Rule 15.1, because its mere adoption of the Findings and Recommendations of the Commission fails to meet its obligation to point out any perceived misstatements of fact set forth in Petitioner's Petition for Writ of Certiorari.

C. Inadequate Legal Counsel Issue Is Exceptional

Respondent's challenge to Petitioner's claim of inadequate legal counsel is faulty, and misrepresents the facts. Petitioner originally retained the services of Mr. Bruce Harvey, a very experienced and well-qualified trial attorney, to represent her before the Judicial Qualifications Commission. Mr. Harvey thoroughly discussed the case with Petitioner and studied the case documents, which later

---

[6] Respondent's Brief in Opposition, at 4.

[7] Petition for Writ of Certiorari, Petition and Supporting Brief in Objection to Findings and Recommendations of the Judicial Qualifications Commission , App. at A53-89.

became the case exhibits, prepared and filed all preliminary pleadings prior to the pre-trial conference, and deposed two Peach County Commissioners, who later testified at the Formal Hearing. He could not attend depositions scheduled on two dates by Respondent because of schedule conflicts, so he arranged for substitute counsel to appear at those depositions on Petitioner's behalf.

Mr. Pete Whitlock, who is an associate in Mr. Harvey's law firm, substituted for Mr. Harvey at the deposition of Judge Kendall Jordan, taken on August 12, 1994, by Respondent.[8] According to Mr. Whitlock it was a short deposition that lasted about 20 minutes.[9] On September 26, 1994, when Petitioner was advised that Mr. Harvey would not be able to attend the pre-hearing conference scheduled for September 27, 1994, she asked Mr. Whitlock to attend the conference.[10] Mr. Whitlock advised Judge Lawson, the designated presiding judge for the Formal Hearing, at the pre-hearing conference held on September 27, 1994, that he was "going through trial for the first time", and that his "sum total knowledge of the case" was his participation at the Jordan deposition and what he and Mr. Harvey had "just talked about informally".[11] As shown by the transcript of the pre-hearing conference,[12] Mr. Whitlock's representation of Petitioner was nothing more than perfunctory: it lacked the adversarial spirit that stems from being an experienced, informed and prepared counsel.

Mr. Michael Hauptman substituted for Mr. Harvey at five depositions taken on August 11, 1994. One of the

---

8 Judge Jordan did not appear as a witness at the Formal Hearing.

9 Respondent's Brief in Opposition, App. at 107.

10 Petitioner and Mr. Whitlock never discussed the case documents, the potential witnesses, or the case with each other prior to the Formal Hearing. Petition for Writ of Certiorari, at 12, 25.

11 Respondent's Brief in Opposition, App. at 107.

12 *Id.* at App. 105-114.

individuals deposed was the Sheriff of Peach County, Johnnie Becham. Of the five individuals deposed, Sheriff Becham was the only one who later testified at the Formal Hearing. Although Mr. Hauptman substituted for Mr. Harvey at the above-mentioned depositions, he is not in association with Mr. Harvey; he has a separate law practice and office address.

Mr. Harvey was still in the midst of a criminal trial on September 29, 1994, and was unable to attend the Formal Hearing. Mr. Whitlock, therefore, represented Petitioner. At the request of Mr. Whitlock, Mr. Hauptman attended the Formal Hearing held on September 29, 1994. He arrived after Mr. Whitlock moved and argued for a continuance, but in time to hear the Commission's denial of the motion.[13] Later he cross-examined, without trial preparation, two witnesses, Sheriff Becham and Marcia Willis, the Peach County Administrator. Notably, Mr. Hauptman did not attend the second day of the Formal Hearing held on September 30, 1994. Additionally, Mr. Hauptman had no meaningful opportunity to prepare for the case because he had not discussed the case with Petitioner and, except for the very few documents he saw during the depositions he attended seven weeks earlier, he had not read or studied the numerous case documents or exhibits, and he had not read any of the deposition transcripts.

Respondent's denial of Mr. Whitlock's oral Motion for Continuance at the beginning of the Formal Hearing was based on Petitioner's refusal to take an "indefinite"[14] (not "temporary", as stated in Respondent's opposing brief[15]) leave of absence from office. Conditioning the grant of a continuance on the basis that Petitioner take an indefinite leave of absence from office, who had not yet been tried and

---

13 Respondent's Brief in Opposition, App. at 117.

14 Respondent's Brief in Opposition, App. at 118.

15 Respondent's Brief in Opposition, at 5.

found guilty of any misconduct, and without any reasons or justifiable explanation being given by Respondent for such conditional terms, was a coercive, arbitrary, and prejudicial ploy by Respondent, and was an abuse of discretion. Due process was clearly lacking in Respondent's offer to grant a continuance on such a basis. Obviously, granting Petitioner a continuance so that her legal counsel could adequately prepare a meaningful defense was not the object of concern of Respondent, instead the objective was to remove her from her judicial office as soon as possible, which for all practical purposes the offer of continuance, if it had been accepted by Petitioner, would have accomplished.

The facts and circumstances detailed herein, when combined with those stated in the Petition for Writ of Certiorari,[16] show that Mr. Whitlock, an inexperienced trial counsel, was not given a reasonable opportunity to adequately prepare a meaningful defense on Petitioner's behalf.

This Court has stated that "it is denial of an accused's constitutional right to a fair trial to force him to trial with such expedition as to deprive him of effective aid and assistance of counsel". *White v. Ragen*, 324 U.S. 760, 65 S.Ct. 978, 89 L.Ed. 1348, rehearing denied 326 U.S. 807, 66 S.Ct. 133, 90 L.Ed. 492. Also, in *Chandler v. Fretag*, 348 U.S. 3, 75 S.Ct. 1, 99 L.Ed. 4, this Court said "that a defendant must be given reasonable opportunity to employ and consult with counsel". In this case Petitioner was forced to proceed in the Formal Hearing with new trial counsel, who

---

[16] Mr. Whitlock had two days to prepare for the Formal Hearing. The case at that point involved hundreds of pages of documents and exhibits, and over 450 pages of deposition transcripts. He had no meaningful opportunity to read the documents or to study the case, or to discuss the case with Petitioner; and he advised Respondent in his oral Motion for Continuance at the beginning of the Formal Hearing that he was not "adequately prepared", that he "would not be able to adequately represent Judge O'Neal", and that he felt he "would be ineffective". Petition for Writ of Certiorari, at 11-12, 25, and accompanying notes.

by his own admission was unable to adequately prepare a defense on just two days notice,[17] Furthermore, Petitioner was not afforded a reasonable opportunity to consult with her new trial counsel.[18] Under such circumstances Respondent's denial of a continuance was an abuse of discretion, and so arbitrary as to violate due process. See *Ungar v. Sarafite*, 376 U.S. 575, 84 S.Ct. 841, 11 L.Ed.2d. 921, rehearing denied 377 U.S. 925, 84 S.Ct. 1218, 12 L.Ed.2d. 217 (Whether the denial of a continuance is so arbitrary as to violate due process depends on the circumstances present in each particular case.). Additionally, Mr. Whitlock's admission to the effect that he felt he "would be ineffective"[19], given as one of the reasons for the Motion for Continuance, highlights Respondent's abuse of discretion in denying the motion. See *Grigsby v. Mabry*, 637 F.2d. 525, on remand 569 F.Supp. 1273 (Although continuance is usually within the discretion of the trial court, trial court's refusal to grant a continuance may deny a defendant effective assistance of counsel or be so arbitrary as to violate due process.).

Petitioner's claim that she was denied adequate legal counsel, as supported by the facts and circumstances stated herein and in the petition, sufficiently states a Fifth Amendment claim to warrant review by this Court.

D. Importance Of Issues

The issues raised by Petitioner, in the context of a judicial officer, are important because the public has a substantial interest in the integrity of the judiciary and in having elected judges in office who are not fearful of expressing their opinion publicly with respect to public

---

17 Petition for Writ of Certiorari, at 12 and note 25.

18 *Id.* at 12, 25.

19 *Id*, at 12 and note 25.

corruption and other "matters of legitimate public concern"[20]; who are not fearful of asserting their constitutional right to deny charges of misconduct when they believe they have not committed any misconduct; and who are not denied adequate legal counsel to aid in their defense against charges of misconduct. The novel nature of the facts and issues in this case will likely result in the reported decision below being read by many judges and cited in other cases in Georgia and throughout the Nation. Thus, the potential for judicial intimidation, injustice and the undermining of the public's interest in the integrity of the judiciary caused by the negative influence upon judges who read the decision, and other decisions which may be based on the erroneous decision are additional reasons why the petition should be granted.

Lastly, it is quite evident that Petitioner's First and Fifth Amendment rights were violated and in such cases this Court has stated that, "Where... it is clear that the action of the State violates the terms of the fundamental charter, it is the obligation of this Court so to declare." *Shelley v. Kraemer*, 334 U.S. 1, 68 S.Ct. 836 (1948).

---

[20] *Quoting* from Scott v. Flowers, et al., 910 F.2d 201, 211 (5th Cir. 1990).

CONCLUSION

In light of all the foregoing reasons, as well as those set forth in the petition, the Petition for the Writ of Certiorari should be granted.

Respectfully Submitted,

Linda O'Neal
Petitioner, pro se
Route 1, Box 478
Fort Valley, Georgia 31030
(912) 825-1678

September 11, 1995